

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

NUANCE COMMUNICATIONS, INC.,

Plaintiff and Counterclaim
Defendant,

v.

OMILIA NATURAL LANGUAGE
SOLUTIONS, LTD.,

Defendant and Counterclaim
Plaintiff.

Case No. 1:19-CV-11438-PBS

JURY TRIAL DEMANDED

**OMILIA’S NOTICE OF MOTION TO DISMISS
COUNTS IX-XIII OF THE FIRST AMENDED COMPLAINT**

Defendant and Counterclaim Plaintiff Omilia Natural Language Solutions, Ltd.

(“Omilia”) moves to dismiss Counts IX-XIII of the First Amended Complaint (Dkt. No. 102) of Plaintiff and Counterclaim Defendant Nuance Communications, Inc. (“Nuance”). Omilia moves to dismiss Counts IX-XIII on the grounds that each count fails to state a claim under Federal Rule of Civil Procedure 12(b)(6). Counts IX-XIII (all counts) are barred by the statute of limitations applicable to each cause of action. In addition, Count X (violation of the Digital Millennium Copyright Act) should be dismissed because the amended complaint does not allege that Omilia circumvented a technological control measures in violation of 17 U.S.C. § 1201(a)(1); Count XI (violation of the Computer Fraud and Abuse Act) should be dismissed because the amended complaint does not allege that Omilia acted “without authorization” or “exceeds authorized access” under 18 U.S.C. § 1030(a)(2) or 18 U.S.C. § 1030(a)(4); and Counts XII (conversion) and Count XIII (trespass to chattels) should be dismissed because they are

preempted by the federal Copyright Act. Nuance's claims for statutory damages and attorney's fees for copyright infringement should be dismissed or stricken under 17 U.S.C. § 412 because the alleged infringement commenced before the registration of the asserted copyrighted works.

The motion is based on this notice of motion and the accompanying memorandum of law, declarations, request for judicial notice, and exhibits to the declarations.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d), Omilia believes that oral argument may assist the Court and requests oral argument of this motion.

Dated: June 29, 2020

Respectfully Submitted,

/s/ Kevin C. Adam
Kevin C. Adam (SBN 684955)
Daniel S. Sternberg (SBN 688842)
WHITE & CASE LLP
75 State Street, 24th Floor
Boston, MA 02109
(617) 979-9300
kevin.adam@whitecase.com
daniel.sternberg@whitecase.com

Of Counsel:
Dimitrios Drivas (*admitted pro hac vice*)
Raj Gandesha (*admitted pro hac vice*)
Stefan Mentzer (*admitted pro hac vice*)
John Padro (*admitted pro hac vice*)
WHITE & CASE LLP
1221 Avenue of the Americas
New York, NY 10020-1095
(212) 819-8286
ddrivas@whitecase.com
rgandesha@whitecase.com
smentzer@whitecase.com
john.padro@whitecase.com

Hallie Kiernan (*admitted pro hac vice*)
WHITE & CASE LLP
3000 El Camino Real
Two Palo Alto Square, Suite 900
Palo Alto, CA 94306
(650) 213-0300
hallie.kiernan@whitecase.com

*Counsel for Omilia Natural Language Solutions,
Ltd*

LOCAL RULE 7.1(a)(2) CERTIFICATION

I hereby certify that on June 18, 2020, counsel for Omilia and Nuance conferred in good faith about this motion but were unable to resolve or narrow the issues raised in this motion at this time.

/s/ Kevin C. Adam

Kevin C. Adam

CERTIFICATE OF SERVICE

I hereby certify that counsel of record who are deemed to have consented to electronic service are being served on June 29, 2020, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5.4 (c).

/s/ Kevin C. Adam

Kevin C. Adam